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**UTAH LABOR COMMISSION**

**DARRYL A. CRANDALL,**

**Petitioner,**

**vs.**

**UNIVERSITY OF UTAH and  
WORKERS COMPENSATION  
FUND,**

**Respondents.**

**ORDER ON MOTION  
FOR REVIEW**

**Case No. 05-0722**

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Darryl A. Crandall asks the Utah Labor Commission to review Administrative Law Judge Hann's partial denial of Mr. Crandall's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Crandall claims workers' compensation benefits from the University of Utah and its insurance carrier, Workers' Compensation Fund, (referred to jointly as "the University") for a work injury to his right knee on April 12, 2001, and his left knee on February 13, 2003. Judge Hann held an evidentiary hearing and awarded temporary total disability compensation, permanent partial disability compensation, medical expenses, and travel. However, Judge Hann denied Mr. Crandall's claim for permanent total disability benefits and reimbursement for medical expenses related to his treatment with Dr. West.

In his motion for review, Mr. Crandall argues that he was entitled to a preliminary finding for permanent total disability and that the University is liable for all of his necessary medical treatment, including treatment with Dr. West.

**FINDINGS OF FACT**

The Commission adopts Judge Hann's findings of fact to the extent they are consistent with this decision. The following facts are relevant to the motion for review:

As a painter for the University, Mr. Crandall's duties included kneeling, crawling, climbing, and lifting paint cans, scaffolding, and ladders. On April 12, 2001, he injured his right knee at work while loading paint onto scaffolding. He sought medical treatment and had surgery for a torn

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medial meniscus on July 11, 2001. By May 14, 2002, he was released to full duty with no permanent restrictions and was assigned a 1 % whole person impairment as a result of the injury.

On January 3, 2003, Mr. Crandall complained of continued right knee pain to Dr. Greis and reported that his knee was buckling when he went up and down stairs. Dr. Greis observed a stable knee but recommended an arthroscopic evaluation. Mr. Crandall requested a second opinion and the University sent him to Dr. Novak for examination on January 13, 2003. Dr. Novak did not believe that an arthroscopic examination was warranted. Dr. Novak released Mr. Crandall to light duty on February 13, 2003. That same day, after preparing and painting four interior door casings, both of Mr. Crandall's knees began to hurt and, at that point, he decided he could not perform his work anymore. He has not returned to employment since that date.

On March 17, 2003, the University sent Mr. Crandall to Dr. West for evaluation. Thereafter, Mr. Crandall filed an application to change doctors to Dr. West, preferring Dr. West for further treatment and, later, surgery. On June 16, 2003, the University denied his request, stating that he had already changed doctors from Dr. Greis to Dr. Novak. Mr. Crandall continued treatment with Dr. West, who performed surgery on his left knee on July 29, 2003. Mr. Crandall's left knee reached medical stability by October 1, 2003; however, his right knee pain remained and he continued treatment. On December 14, 2004, Dr. West released Mr. Crandall to work with restrictions of no kneeling, squatting, bending, lifting, twisting or climbing, and walking and standing limited to two hours. By December 7, 2005, Dr. West noted there was nothing further to offer in treatment as Mr. Crandall's right knee condition was chronic.

Dr. Knoebel, the University's medical consultant, assessed Mr. Crandall's right knee as medically stable by December 7, 2005. He issued a 2% whole person impairment for the right knee and recommended permanent restrictions of lifting 35 pounds occasionally, no climbing ladders, no repetitive stair climbing, and no running, jumping, kneeling, squatting, or prolonged walking on uneven ground. He also recommended that Mr. Crandall limit his walking and standing to one hour at a time, with a 10 minute rest in between. A functional capacity evaluation indicated Mr. Crandall is functional at a sedentary to medium physical demand work level.

At the hearing, Mr. Crandall testified to activity that included hiking, biking, or walking daily, for at least one hour at a time, resting often. He is independent in activities of daily living, including housework and shopping. He takes ibuprofen three to four times a week for his pain, and hydrocodone for emergencies, which averages once a month or less. He also does occasional volunteer work.

Judge Hann also appointed a medical panel due to the conflicting medical opinions on medical causation. The panel's opinion was that both knee conditions were medically caused by the work accidents and that all of the medical treatment Mr. Crandall received had been reasonable and necessary to treat his work injuries.

**DISCUSSION AND CONCLUSION OF LAW**

To establish a claim for permanent total disability, § 34A-2-413 of the Utah Workers' Compensation Act requires Mr. Crandall to prove that (1) he has a significant impairment or a combination of impairments as a result of his work injury; (2) he is permanently and totally disabled, which is further determined by a four-part test; and (3) the work injury was the direct cause of his disability. Judge Hann denied benefits, concluding that Mr. Crandall failed to establish the first two elements of his claim, i.e., that he is significantly impaired as a result of his work injuries or that he is permanently and totally disabled.

In his motion for review, Mr. Crandall argues that he is entitled to permanent total disability compensation because he satisfied all three of the above criteria. He contends, first, that Judge Hann erred in finding that he was not significantly impaired just because he could still perform some "minor activities." However, the activities he can still perform, such as hiking, biking, housework, and volunteer work, are important to determining whether he has a significant impairment and the Commission finds, taking all of this into consideration, that Mr. Crandall does not have a significant impairment or combination of impairments as a result of his work injury. Mr. Crandall also contends that he satisfied all four criteria of the steps necessary to showing that he is permanently and totally disabled, particularly that he is unable to perform other work reasonably available. However, the Commission finds that there is no convincing evidence showing he would be unable to perform other work reasonably available. For these reasons, the Commission finds that Mr. Crandall is not entitled to permanent total disability and affirms Judge Hann's denial of permanent total disability benefits.

The Commission turns to Mr. Crandall's second argument that the University should be liable for the expenses related to his medical treatment with Dr. West. In support of this contention, Mr. Crandall cites to Commission Rule R612-1-9(A)(2), which provides, "[t]he employee may make one change of doctor without requesting the permission of the carrier, so long as the carrier is promptly notified of the change by the employee." The University denied Mr. Crandall's request, claiming Mr. Crandall previously requested a change in doctors from Dr. Greis to Dr. Novak. Mr. Crandall argues that it was the University who chose Dr. Novak for him in order to get a second opinion and that the first time he requested a change in doctors was when he requested that Dr. West be his treating physician; therefore, the University had no basis for its denial.

Section 34A-2-418 of the Act provides that in addition to compensation, the employer shall pay reasonable sums for medical services necessary to treat the injured worker. The medical panel stated that the medical treatment Mr. Crandall received had been necessary to treat the work injuries. Thus, statutorily, the University was obligated to pay for Dr. West's services. The University has offered, however, the affirmative defense that Mr. Crandall was liable for those services because he continued treatment after receiving notice the services were denied, relying on Commission Rule R612-2-9(C). This rule provides that "[a]n injured employee who knowingly continues care after denial of liability by the carrier may be individually responsible for payment. It shall be the burden

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of the carrier to prove that the patient was aware of the denial.” Judge Hann agreed and found Mr. Crandall liable for costs related to this treatment.<sup>1</sup>

Assuming for discussion that the University had implemented a managed health care system pursuant to § 34A-2-111 of the Workers’ Compensation Act, the pertinent question is whether Mr. Crandall violated the Commission’s rules established for enforcing this section when he continued treatment with Dr. West, despite the University’s denial. The Commission finds that it was the University who sent Mr. Crandall to Dr. Novak and to Dr. West for medical treatment. The first time Mr. Crandall requested to change doctors, assuming that Mr. Crandall’s request to remain with Dr. West qualified as such a request, was when he submitted an application to the University asking that Dr. West continue treatment. Therefore, the Commission concludes that Mr. Crandall did not violate Rule R612-2-9(c) by continuing his treatment with Dr. West and he is entitled to payment of all necessary medical treatment, including those expenses related to his treatment with Dr. West.

**ORDER**

The Commission affirms Judge Hann’s denial of permanent total disability benefits. Judge Hann’s decision holding Mr. Crandall’s liable for the medical costs incurred with Dr. West is reversed and the University is ordered to pay the reasonable costs for medical treatment necessary to treat Mr. Crandall’s right and left knee, including medical and travel costs related to his treatment with Dr. West. It is so ordered.

Dated this 28<sup>th</sup> day of October, 2008.

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Sherrie Hayashi  
Utah Labor Commissioner

**IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.**

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<sup>1</sup> In making this finding, Judge Hann stated Mr. Crandall had no right to appeal the University’s denial of coverage. However, after reviewing the applicable statutory provisions and rules, the Commission finds it still retains authority to review the University’s application of the Commission’s rules in denying benefits.

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**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.